



General Assembly of Tennessee
OFFICE OF LEGAL SERVICES
War Memorial Building
Nashville, Tennessee 37243-0059

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JUL 18 2007

OFFICE OF
GENERAL COUNSEL

July 13, 2007

M E M O R A N D U M

TO: Kevin Rhoten

FROM: Fred Standbrook, Legislative Attorney

SUBJECT: Rules Filed with Secretary of State

Pursuant to Tennessee Code Annotated, Section 4-5-226, on Wednesday, August 1, 2007, at 1:30 in Room 12 of the Legislative Plaza, the House and Senate Government Operations Committees will meet jointly to consider rules filed with the Tennessee Secretary of State. Attached is an agenda and a copy of the rules filed by your agency that will be considered.

At the hearing you should give a brief explanation of the rules and state whether these rules are new rules or are amendments to existing rules. If the rules under consideration are permanent rules you should also inform the committees whether these rules have previously been the subject of a rulemaking hearing. At the end of your presentation you should ask if there are any questions from the members of the committees.

If, for any reason, you are unable to attend the rule review meeting, please notify me as soon as practicable so suitable arrangements can be made.

If you have any questions regarding this matter, please call me at your convenience at 741-9508.

FS:sn

A G E N D A

RULE REVIEW

GOVERNMENT OPERATIONS COMMITTEES

August 1, 2007

Room 12 – Legislative Plaza – 1:30 P.M.

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Tennessee Business Enterprises

SUBJECT: Priority for Establishment of Vending Services;
Procurement Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 71-4-504 and 71-4-403

EFFECTIVE DATES: June 23, 2007 through June 30, 2008

FISCAL IMPACT: The agency has provided the following fiscal impact information:

Projecting the revenue to be generated by a coordinated effort to collect revenue from vending machines on public properties is difficult, since identifying the locations of all of the machines has not been completed. However, based upon the information currently available, it is estimated that approximately \$300,000 annually can be generated for use in the Blind Vendor Program. Such funds are eligible to be used as match to draw down additional federal funds.

STAFF RULE ABSTRACT: These rules amend Rule Chapter 1240-6-13, which governs the Tennessee Business Enterprises Program, also known as the Blind Vendor Program. This rule chapter implements the provisions of Tennessee Code Annotated, Section 71-4-504, relative to vending machines on public properties that are not operated by a licensed blind vendor. These rules set forth guidelines as to how public properties are to secure such vending services.

These rules also enact a new Rule Chapter 1240-6-14, which details how TBE is to purchase goods and services on behalf of the blind vendors participating in the program. The agency reports that Tennessee Code Annotated, Section 71-4-403, grants TBE flexibility in making such purchases, but this new rule chapter sets forth guidelines to ensure that the needs of the program are being met in a cost effective manner.

DBID 2501
2502

Rulemaking Hearing Rules
of
The Tennessee Department of Human Services
Tennessee Business Enterprises

Chapter 1240-6-13 (2501)
Priority for the Establishment of Vending Facilities

New Rules

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1240-6-13-.02 Priority for Unassigned Vending Machine Locations

Chapter 1240-6-13 is amended by adding a new rule as 1240-6-13-.02 and renumbering the current rules 1240-6-13-.02 and 1240-6-13-.03 as 1240-6-13-.03 and 1240-6-13-.04. The language of the new 1240-6-13-.02 is as follows:

1240-6-13-.02 Priority for Unassigned Vending Machine Locations

- (1) Any public property that desires vending services is required pursuant to 1240-6-13-.01 above to notify the department so that a survey can be conducted. If the results of that survey suggest that the location should not be assigned to a blind vendor, the department will arrange for the service to be provided by a third party vendor. Such locations shall be referred to as "unassigned" locations. When making a decision as to whether or not to assign a blind vendor, the department will consider the following factors:
 - (a) Sales volume,
 - (b) Budgetary/revenue needs of TBE,
 - (c) Cost of installing any equipment,
 - (d) History of the location,
 - (e) Availability of a licensed blind vendor,
 - (f) Any other factors the department deems pertinent relative to the specific location.
- (2) The department shall have the authority to select the third party vendor to provide the desired vending services and shall execute an agreement with the third party vendor authorizing said vending services. The department may consult with any entity affected by the selection of the vendor. If a third party vendor is currently providing services, and those receiving said services are satisfied with the level and quality of services, the department may elect to allow that vendor to continue providing services provided an acceptable agreement can be negotiated.
 - (a) The department shall determine pricing of products to be sold. The department shall ensure that prices are fair and do not exceed prices normally charged by licensed blind vendors in other government buildings. To the extent practical, the department will attempt to ensure consistency in pricing from one unassigned location to another.
 - (b) The department shall negotiate a fair and competitive commission rate to be paid by the third party vendor to the department for use pursuant to 1240-6-14-.02. The third party vendor shall be required to submit written reports verifying sales and the

accuracy of the commission payments. Such reports are subject to audit by the department and/or other state entities. The department shall have the right to establish other procedures as appropriate to ensure it is receiving all funds to which it is entitled.

- (c) If a property management official fails to comply with subsection (1) above and arranges for vending services on his/her own and it comes to the attention of the department, representatives of the department shall notify the property management official of the non-compliance and make arrangements for the private vendor to send all future commissions from the vending machines to the department. The department shall negotiate a fair commission rate and may replace the third party vendor if an agreement cannot be reached with the company providing the service.
- (d) The department, in its sole discretion, may elect to share revenue from the vending machines with the state or local government entity. This will be done primarily to offset any loss in revenue by the government entity as the result of the department assuming responsibility for the vending machines. Such an income sharing arrangement may be time limited and may impact the pricing structure of products being sold through the vending machines.
- (e) The department will act to correct any documented deficiencies in service that are brought to its attention. This may include removing and replacing a third party vendor.
- (f) The department, in its sole discretion, may elect to remove a third party vendor from any location and assign the vending to a licensed blind vendor. On an annual basis, the department shall provide sufficient information to the Committee of Blind Vendors so that the Committee can actively participate in decisions as to any of the unassigned locations that could be considered for assignment to a blind vendor.
- (g) If any dispute arises between property management and the department as the result of enforcement of these provisions, either party shall have the right to file a complaint with the Secretary of State's Office pursuant to Tenn. Code Ann. § 71-4-507.
- (h) Revenue from unassigned locations shall be spent in accordance with 1240-6-14-.02 of these rules and regulations.
- (i) The department shall maintain records of all unassigned locations and provide reports on a quarterly basis to the Committee of Blind Vendors.
- (j) After affording the Committee an opportunity for active participation, the department may choose to employ adequate staff or may elect to contract with a third party entity to carry out the provisions of this section.
- (k) These provisions do not apply to vending machines located at interstate rest areas. The installation of such machines and the revenue from those machines are governed by federal guidelines.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

The Tennessee Department of Human Services
Tennessee Business Enterprises

Chapter 1240-6-17 (2502)
Procurement Requirements

New Rules

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1240-6-17-.06	Purchases Recommended by the Committee of Blind Vendors

1240-6-17-.01 General

- (1) It is the responsibility of the department to administer Tennessee Business Enterprises in accordance with all applicable state and federal laws, rules, and regulations. As the caretaker of funds levied against the licensed blind vendors and funds received from unassigned vending locations, the department must ensure that such funds are accounted for and expended in accordance with acceptable practices.
- (2) T.C.A. 71-4-403 exempts TBE from most purchasing requirements normally required of a state entity. This exemption does not relieve the department from being a good steward of the funds. The department must ensure that goods and services are secured at the best price practical taking into consideration all factors. The department will develop internal policies to ensure that goods and services are purchased at a fair and reasonable price.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

1240-6-17-.02 Equipment Purchases

- (1) The department will purchase necessary equipment using funds collected pursuant to 1240-6-9-.01 and 1240-6-14-.02 and federal vocational rehabilitation dollars if such federal funds are available. Written bids may not be required when purchasing equipment; however, TBE staff has an obligation to ensure that purchases are made in a cost effective manner. In making decisions about which equipment to purchase, the staff person shall consider costs as well as delivery time, quality, past performance of the equipment and/or supplier, trade-in allowance, decor if machines are being matched with other machines in a location, and the preferences of the licensed blind manager who will be servicing the machines.
- (2) Although written bids are not required, the department may elect to solicit annual price quotes from vending machine distributors. TBE shall treat these price quotes as bids and will purchase the least expensive piece of equipment when practical if it meets the needs of the facility and the licensed blind manager.
- (3) Purchases \$1,000 and Less— TBE Consultant / Specialist may make these purchases without prior supervisory approval and without the need to solicit competitive bids.
- (4) Purchases from \$1,001 up to and including \$5,000 – TBE Consultant / Specialist must obtain supervisory and the department's Fiscal Services approval before making purchases. Written

bids are not required except that any price quotes received pursuant to subsection (2) above will be considered when making purchasing decisions.

- (5) Purchases Over \$5,000 – Any purchase that exceeds \$5,000 requires prior supervisory and Fiscal Services approval. Competitive bids will be required in accordance with the TBE's internal policies and procedures.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

1240-6-17-.03 Construction and Renovations

- (1) When installing a new vending facility or renovating an existing vending facility, the department may be required to perform construction. The department shall ensure that any construction work is done at competitive prices. The same requirements as specified in 1240-6-17-.02 above shall apply to any construction projects.
- (2) Construction projects on any state property may require approval by the State Building Commission. The department must comply with the requirements of the State Building Commission.
- (3) The architect responsible for the construction project may solicit bids for such project on behalf of the department.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

1240-6-17-.04 Merchandise Purchases

- (1) It is the responsibility of the department to provide the initial merchandise inventory for all vending facilities. When purchasing merchandise for a vending facility, the TBE Consultant / Specialist must secure supervisory and Fiscal Services approval regardless of the amount of merchandise being procured. Bids shall not be required. All merchandise shall be purchased from reputable wholesale distributors.
- (2) If no wholesale distributor is available or willing to accept the department's payment authorization, merchandise may be purchased from a licensed blind manager provided the manager sells the product at his/her actual cost.
- (3) The amount of merchandise to be purchased for a vending facility shall be made in accordance with policies contained in the Operations Manual and shall be based upon projected sales volume.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

1240-6-17-.05 Procurement of Non-Tangible Goods and Services

- (1) In order to ensure an effective and efficient operation, the department may choose to procure certain non-tangible goods and services that can be provided better and perhaps more cost effectively by third party private sector vendors. Competitive bids are not always practical. The department shall generally negotiate a fee or pay the standard and customary rate for the service being provided.
- (2) The department, after active participation by the Committee of Blind Vendors, may elect to hire its own technicians to provide vending machine maintenance and repair services or

procure the services from private sector vendors. If it elects to purchase such services, the department will establish agreements with local companies who have an expertise in repairing vending machines. These agreements shall include an agreed upon hourly rate, mileage rate not to exceed the amount authorized by Comprehensive State Travel Regulations, and the amount to be paid for parts. At least once every five years, the department shall solicit bids from companies to ensure that costs are competitive. Companies expressing an interest in providing such services will be interviewed by department staff and local representatives of the Committee of Blind Vendors before a private sector vendor is selected to provide the service. Price shall not be the only factor considered when selecting the repair vendor. The department may also consider the company's record of performance, the qualifications of its vending machine technicians, its financial resources, stability of management, and other such factors.

- (3) When a piece of equipment other than a vending machine is in need of repair, the department shall contact a company that specializes in such repairs. For example, if a freezer is broken, a refrigeration company will be contacted; if the air conditioning goes out, a heating and air contractor will be contacted; and if there are plumbing issues, a licensed plumber will be contacted. Whereas bidding individual repair jobs is not practical, the department shall pay the standard and customary fee that the company charges all customers for such services.
- (4) The department may choose to incorporate equipment moves into its agreements with the companies providing the vending machine repair services since most of the machines being moved are vending machines. If not, the department will solicit three bids from reputable companies willing to provide the service on an hourly rate. Bids shall be good for a predetermined time period.
- (5) On certain construction or renovation projects, the department may have to secure the services of an architect. The department will pay the hourly rate that has been established by the State Building Commission.
- (6) From time to time, the department may be required to procure other services on behalf of the program. The department may either pay the standard and customary fee associated with a service or negotiate agreements that ensure that quality services are being provided at fair and competitive prices.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

1240-6-17-.06 Purchases Recommended by the Committee of Blind Vendors

- (1) The Committee of Blind Vendors shall be granted consideration in major administrative decisions, including, but not limited to, funds expended from those levied against licensed blind managers or received in commissions from unassigned locations. This includes making recommendations on the purchase of certain goods and services. When using non-appropriated funds, the department may abide by the recommendations of the Committee of Blind Vendors without the necessity of soliciting written bids provided the Committee considers cost when making its recommendation.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14.

Legal Contact or Party who will approve final copy:

Kevin Rhoten
Assistant General Counsel
Citizens Plaza Building, 15th Floor
400 Deaderick Street
Nashville, Tennessee 37248-0006
(615) 313-4731

Contact for disk acquisition:

Alan Buescher
Legal Assistant
Citizens Plaza Building, 15th Floor
400 Deaderick Street
Nashville, Tennessee 37248-0006
(615) 313-4731